

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MATTHEW FILBERTO  
BRUCE-MILLER,  
Petitioner

v.

DEPARTMENT OF HOMELAND  
SECURITY,  
Respondent

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CIVIL NO. 4:CV-04-2585

(Judge Jones)

**ORDER**

July 1, 2005

**Background**

Matthew Filberto Bruce-Miller (“Petitioner” or “Bruce-Miller”), A#77-937-581, filed this pro se Petition for Writ of Habeas Corpus (“the Petition”) pursuant to 28 U.S.C. § 2241 regarding his detention by the Bureau of Immigration and Customs Enforcement (“BICE”) at the Pike County Prison, in Lords Valley, Pennsylvania.<sup>1</sup> Service of the Petition was previously ordered.

Presently pending before the Court is Respondent's Motion to Transfer the Petition (“the Motion”) (doc. 19) to the United States Court of Appeals for the Second Circuit, pursuant to the REAL ID Act of 2005, H.R. 1268, 109<sup>th</sup> Cong.

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<sup>1</sup> Respondent states that Petitioner was removed from the United States on April 25, 2005. See Rec. Doc. 20, p. 2.

(2005). A brief supporting Respondent's Motion states that Petitioner was served with a final order of removal on November 26, 2004.<sup>2</sup> See Rec. Doc. 20, p. 1. The final administrative order directing Bruce-Miller's removal from the United States to Jamaica was issued by an Immigration Judge in Malone, New York. For the reasons set forth below, the Motion will be granted and the Petition will be transferred to the Second Circuit Court of Appeals.

Respondent correctly contends that "Section 106 of the REAL ID Act of 2005 amended section 242(a) of the INA to provide that the sole and exclusive means to review an order of removal shall be by petition for review in the applicable court of appeals. H.R. 1268, 109<sup>th</sup> Cong. (2005)(enacted), Pub.L.No. 109-13, Div.B, 119 Stat. 231." Rec. Doc. 20, pgs. 2-3. The amendment became effective on May 11, 2005.

Section 106(c) provides that "[i]f an alien's case, brought under section 2241 of title 28, United States Code, and challenging a final administrative order of removal, deportation, or exclusion, is pending in a district court on the date of the enactment of this division, then the district court shall transfer the case (or the part of the case that challenges the order of removal, deportation, or exclusion) to the court of appeals for

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<sup>2</sup> Attached to Bruce-Miller's petition are copies of a Notice of Intent to Issue a Final Administrative Removal Order dated May 29, 2002 and a Final Administrative Removal Order with a handwritten date of September 25, 2002. See Doc. 1, Exhibit 1. However, for purposes of this discussion, the Court will accept Respondent's contention that Petitioner was not served with the final order of removal until November 26, 2004.

the circuit in which a petition for review could have been properly filed under section 242(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1252), as amended by this section, or under section 309(c)(4)(D) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note). The court of appeals shall treat the transferred case as if it had been filed pursuant to a petition for review under section 242, except that subsection (b)(1) of such section shall not apply.”

As Bruce-Miller is challenging a final administrative order of removal, section 106(c) mandates transfer of the matter to the Second Circuit Court of Appeals, the circuit where the Immigration Judge presided over the immigration proceedings and issued Petitioner's administrative removal order.

**NOW, THEREFORE, IT IS ORDERED THAT:**

1. Respondent's Motion to Transfer (doc. 19) is GRANTED.
2. The Clerk of Court is directed to TRANSFER the instant action to the United States Court of Appeals for the Second Circuit.
3. The Clerk of Court is directed to CLOSE this case.

s/ John E. Jones III  
John E. Jones III  
United States District Judge